



Legal Update

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Searching Cell Phones Incident to Arrest

Police officers can perform a limited search of a cell phone's recent "call list" when it is seized incident to a lawful arrest, for evidence directly relating to the crime for which the defendant was arrested without violating the 4th Amendment and Article 14.

Commonwealth v. Phifer, SJC 11242, (2012)

Background: On July 11, 2011, Boston police were on patrol in East Boston when they observed the defendant, Demetrius Phifer (hereinafter referred to as "Phifer"), talking on his phone and looking for someone. The officers were aware that Phifer had outstanding warrants. After watching him for a few minutes, Phifer got into a vehicle with Dennis Claiborne (hereinafter referred to as "Claiborne") and an unidentified woman. The officers knew that Claiborne was a drug user. A short time later, Phifer exited the vehicle and the officers arrested Phifer along with Claiborne on drug charges. The officers recovered cash and a cell phone from Phifer. At the station, one of the officers made some "manipulations" to the phone and checked the list of incoming and outgoing calls. The officer found that the recent call history displayed several calls from the number associated with the other seized phone. The defendant filed a motion to suppress arguing that his fourth amendment rights were violated when the officer searched the call history list of the cell phone without a warrant. The district court judge held that the officers did not violate the defendants' rights and were justified in conducting a warrantless search of a seized cell phone incident to arrest.

Conclusion: The SJC concluded that the police can search “call history” of a cell phone **incident to a lawful arrest** because the police believed that the cell phone contained evidence related to the arrest. Despite the ruling in this case, the SJC left “open for another day questions concerning whether, when a cellular telephone is validly seized incident to arrest, it may always, or at least generally, be searched without a warrant, and if so, the permissible extent of such a search.” **With the increase of smart phone usage, the rules on searching what content can be searched within a phone are ambiguous and fact specific and it remains unclear the limitations that police have in searching the contents of a cell phone.**

Commonwealth v. Berry, SJC 11056, (2012)

Background: On December 28, 2009, Detectives Rattigan and Handrahan of the Boston Police Department were on patrol in a section of Dorchester known for illegal drugs. While sitting in their unmarked cruiser, the detectives observed a man who looked “sick” and gaunt, get into a vehicle in front of their unmarked cruiser. The detectives observed the man and the driver leaning towards each other. A short time later, the vehicle stopped and the man, identified as Kevin DaRosa, exited the vehicle. While Detective Rattigan stopped DaRosa and recovered a bag of heroin along with a cell phone, Detective Handrahan followed the driver who sped away. Detective Rattigan arrested the defendant and seized a cell phone from his person. At some point back at the station, Detective Rattigan pressed the button on one of the cell phones to review the recent call list. When Detective Rattigan pressed the last number displayed in the call list, the other seized phone rang. Both defendants filed motions to suppress arguing that their fourth amendment rights were violated when Detective Rattigan searched the call history list of their cell phones without a warrant. During the motion hearing, Detective Rattigan testified that he could not recall which phone was searched, or how much time passed between the seizures of the two cellular telephones. The district court judge concluded that the search of the cell phone call list was not lawful without a warrant because it did not take place *contemporaneously* with the arrest. The Commonwealth appealed the defendants’ motions.

Conclusion: Similar to the *Phifer* case, the SJC concluded that the police did not need a search warrant to search the call history of a cell phone. The court further held the search of the “call history” of the cell phone was also permissible even though phone “it occurred sometime after the defendant’s arrest and at the police station rather than contemporaneously with his arrest.”